IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/10/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

Crl.O.P.No.6788 of 2003 and Crl.O.P.No. 24026 of 2003

S.Kumaresan .. Petitioner in both the Crl.O.Ps

-Vs-

1. The State: rep. by the
Sub-Inspector of Police,
Uvari Police Station,
Tirunelveli District.

2. The Inspector of Police,
District Crime Branch,
Tirunelveli District,
Tirunelveli. .. Respondents in both the Crl.O.Ps.

Criminal Original Petitions filed under Section 482 Cr.P.C. as stated therein.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.A.N.Thambidurai,G.A.

:O R D E R

Crl.O.P.No.6788/2003 has been filed praying to quash the investigation by the 2nd respondent concerned in Crime No.49/2002 on the file of the first respondent as illegal and contrary to law.
Crl.O.P.No.24026/2003 has been filed praying to set aside the subsequent investigation made by the 2nd respondent, pursuant to the order of the Superintendent of Police, Tirunelveli dated 22.1.2003, in Crime No.49/2002 on the file of the 1st respondent.
2. On a perusal of the materials made available on record what comes to be known is that originally a case was registered against the petitioner on 17.6.2002 for the offences punishable under Sections 408, 420,468 I.P.C., on the allegation that the petitioner had taken away 18 signed cheques valuing about Rs.2,10,00,000/- along with booklet, consisting of 32 cheques, which was entru sted for disbursement of salary to the employees to the petitioner by the petitioner's step brother; that the petitioner filed an anticipatory bail application before this Court and this Court has ordered the same with the

condition that the petitioner should deposit all the cheques which are in his possession and other 2 cheques which were already presented and subsequently dishonoured; that the petitioner preferred S.L.P.No.2812/20 02 in which the Hon'ble Supreme Court directed the petitioner to get an order before the concerned Court for variation of the conditions imposed on him; that the petitioner filed an anticipatory bail application before this Court and this Court has passed an order of Anticipatory Bail deleting the earlier conditions imposed on him; that on 20.8.2002, this Court imposed some other conditions along with the earlier conditions, further giving liberty to the petitioner to approach this Court to seek appropriate directions depending upon the further developments in the investigation.

It further comes to be known that the petitioner moved two applications for relaxing the conditions imposed on him; that this Court by its order made in Crl.M.P.No.8717/2002 and Crl.M.P.No.13020/2003 has dismissed the same on the ground that the investigation is pending; that the petitioner came to know that the investigation does not disclose any prima facie case but the first respondent has not filed the final report and hence he has filed two applications before this court in Crl.O.P.Nos.994 and 3271 of 2003, one for relaxing the entire conditions and the other for directing the 1st respondent to file final report; that in the meantime the 1st respondent informed this Court that the case has been transferred to the 2nd respondent due to administrative reasons by the Superintendent of Police; that insofar as Crl.M.P.No.994/2003 is concerned, this Court has granted time to complete the investigation by the 2nd respondent and insofar as Crl.M.P.No.3271/2003 is concerned, this Court has dismissed the same as infructuous; that the case of the petitioner is that if really the case had been transferred as per the report of the Superintendent of Police, Tirunelveli on 19.10.2002, the 1st respondent would not have conducted any investigation subsequent to the transfer; that for transferring a criminal case from one police to another, prior consent must be obtained from the Inspector General of Police and also approval from the Director General of Police in cases inasmuch as case punishable under Section 420 IPC wherein the value of the transaction exceeds Rs.25 lakhs; that the report of the Superintendent of Police filed in Crl.M.P.994/2003 does not disclose the completion of the formalities; that there is no truth in the contention of the 1st and 2nd respondents and the Superintendent of Police; that they act as per the instructions of the defacto complainant; that the 2nd respondent also sent a notice under Section 160 of Cr.P.C. calling upon the petitioner to appear for investigation on 2.3.2003; that the ultimate object of the respondents 1 and 2 is to keep the matter pending under the guise of investigation though no case has been made out; that Crl.O.P.67 88/2003 was admitted by this Court and the same was posted for filing counter but, the petitioner has not filed any stay petition; that in the meantime the 2nd respondent for making the above said original application as infructuous, in a hurried manner completed the investigation in spite of the fact that the said investigation itself is subjudice before this Court and contrary to the propriety, the 2nd respondent had acted upon and hence the subsequent investigation proceedings, after admission of the said Crl.O.P. is being challenged and prayed for setting aside the same.

3. During arguments, the learned counsel appearing on behalf of the

petitione would lay emphasis on the facts pleaded in the petition and would reiterate the same facts and circumstances brought forth in the above Criminal Original Petition. He would also cite the following judgments viz.:
1) 1998 S.C.C. CRL.307 (Vineet Narain and others Vs. Union of India and another)
2) 2003 (1) Crimes 302 (SC) M.C.Abraham & Anr. Vs. State of Maharashtra & Ors.)
3) (1999)3 S.C.C. 376 (L.C.Goyal Vs. Suresh Joshi (MRS) and others)
4) 2000(1) MWN (Cr.)51 (A.P)(M/s.Aparna Agencies v. P.Sudhakar Rao & Another) and
5) 2003(3) MWN (Cr.)DCC (Ker.) 55 (Chandran v. Sathyanandan)

4. In the first judgment cited above, it has been held:
"There can be no doubt that the overall administration of the said force, i.e. CBI vests in the Central Government, which also includes, by virtue of Section 3, the power to specify the offences or class of offences which are to be investigated by it. The general superintendence over the functioning of the Department and specification of the offences which are to be investigated by the agency is not the same as and would not include within it the control of the initiation and the actual process of investigation, i.e., direction. Once the CBI is empowered to investigate an offence generally by its specification under Section 3, the process of investigation, including its initiation, is to be governed by the statutory provisions which provide for the initiation and manner of investigation of the offence. This is not an area which can be included within the meaning of "superintendence" in Section 4(1).
.... The word "superintendence" in Section 4(1) cannot be construed in a wider sense to permit supervision of the actual investigation of an offence by the CBI contrary to the manner provided by the statutory provisions. The broad proposition urged on behalf of the Union of India that it can issue any directive to the CBI to curtail or inhibit its jurisdiction to investigate an offence specified in the notification issued under Section 3 by a directive under Section 4(1) of the Act cannot be accepted. The jurisdiction of the CBI to investigate an offence is to be determined with reference to the notification issued under Section 3 and not by any separate order not having that character.
Once the jurisdiction is conferred on the CBI to investigate an offence, by virtue of notification under Section 3 of the Act, the powers of investigation are governed by the statutory provisions and they cannot be estopped or curtailed by any executive instruction issued under Section 4(1) thereof. This result follows from the fact that conferment of jurisdiction is under Section 3 of the Act and exercise of powers of investigation is by virtue of the statutory provisions governing investigation of offences. It is settled that statutory jurisdiction cannot be subject to executive control."

5. In the second judgment cited above, it has been held:
"The contention before this Court was that the High Court was in error in exercising jurisdiction under Article 226 of the Constitution at the stage when the Additional Chief Judicial Magistrate who had jurisdiction to entertain and try the case, had not passed upon the issues before him, by taking upon itself the appreciation of evidence involving facts about which there was an acrimonious dispute between the parties and giving a clean bill

to the suspects against whom the first information report was filed. In this connection this Court relied upon the observations of the Privy Council in King Emperor Vs. Khwaja Nazir Ahmad 1944 LR 711A 203, which reads thus:-
"In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combinationof individual libertywith a due observance of law and order is only to be obtained byleaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate casewhen moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it, and not until then".

6. In the third judgment cited above, it has been held:
"The complainant alleged that when the appellant realized that the complainant has come to know that he had misappropriated a sum of Rs.2 5,491/-, he gave a cheque for a sum of Rs.38,000/- which is Ext.C-4. The said cheque was drawn on UCO Bank and the same was deposited in Central Bank of India in the account of the Union, viz., Siemens Employees' Union, New Delhi. But the said cheque was dishonoured due to insufficient funds. The appellant denied his signature on Ext. C-4 and contended that his signature was forged bythe complainant. It is in this context that it was urged before the Bar Council of India that some handwriting expert be examined in order to find out the genuineness of the signature on Ext. C-4. As stated above, the cheque bounced not on account of the fact that the signature on Ext. C-4 was not tallying with the specimen signature of the appellant kept with the Bank, but on account of insufficient funds. Had the signature on Ext.C-4 been different, the Bank would have returned the same with the remark that the signature on Ext. C-4 was not tallying with the appellant's specimen signature kept with the Bank. The memos Ext. C-6 and Ext.C-8 issued by, the Bank clearly show that the signature of the appellant on Ext. C-4 was not objected to by the Bank, but the same was returned with the remark "insufficient funds". This circumstance shows that the signature on Ext. C-4 was that of the appellant".

7. In the fourth judgment cited above, it has been held that it is not in dispute that the complainant sent a notice by registered post and it was returned after one month with endorsement that "addressee out of station and door locked for seven days". The address in the registered cover tallies with the address noted in cash/credit bills. It is not the case of the

respondent/accused that a wrong address was given on the said cover, but it is properly addressed, prepaid and posted by registered post as required under Section 27 of the General Clauses Act".

8. In the last judgment cited above, it has been held:

"that the cheque was presented for encashment. But it was returned with endorsement "cheque reported stolen". When it is reported that the cheque is stolen, the intention of the drawer is clear. He wants either to stop payment or dishonour of the cheque. Even though it is not endorsed in the cheque, the intention to stop payment is implied. Only after examination of parties that the Court can come to the conclusion that the cheque was returned unpaid due to insufficiency of funds as pleaded in the complaint".

9. On the part of the learned Government Advocate, he would argue to the effect that the Superintendent of Police has transferred the investigation from the first respondent to that of the second respondent and the connected records had also been handed over on 4.2.2003; that the investigation is completed in Crime No.49 of 2002; that the complainant is the Managing Director of the Company and the petitioner Kumaresan is the Working Partner of the company; that the complainant has given 20 signed cheques to the petitioner to hand-over the same to the Madras Branch; that according to the petitioner, he missed the cheques on 23.7.2002, but he presented the cheques on 24.7.2002; that he informed the complainant that the cheques were missing and hence the complainant informed the Bank to stop payment and therefore, the cheques presented were dishonoured and later he had lodged the complaint on 17.6.2002 and the same got registered in Crime No.49 of 2002 for the offences punishable under Sections 408, 468 and 420 I.P.C. by the first respondent and in the application filed by the petitioner for anticipatory bail, he was directed to return the cheques as per the order dated 12.9.2002 and not to encash the cheques without any order; that afterwards Crl.O.P.No.13020 of 2002 and 994 of 2003 were filed and during the hearing of these Criminal Original Petitions, the Deputy Superintendent of Police and the Superintendent of Police have filed different reports and a counter was also filed by the present Investigating Officer; that as per the directions of the Court, the Deputy Superintendent of Police filed another report, based on which the Court directed the Investigating Officer to file a final report on 31.3.2003 and the same was filed. The learned Government Advocate would further submit that it is wrongly stated that the charge sheet was not filed, but it has been filed before the Judicial Magistrate, Valliyur for the offences punishable under Sections 408, 468, 420, 471, 470, 477A r/w Section 511 I.P.C. On such arguments, the learned Government Advocate ultimately stating that it is a matter which is pending for trial and in these circumstance, the prayer cannot be answered and in fact both the petitions filed under the impression that the investigation is pending and the case is still in the FIR stage is wrong and they become infructuous and would seek to dismiss both the Criminal Original Petitions.

10. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is able to assess that after enormous exercises, ultimately charge sheet has been filed as it has been reported on the part of the learned Government Advocate on the Criminal side for very serious offences punishable under Sections 408, 468, 420, 470, 471 and 477 A r/w Section 511 of the I.P.C. and at this juncture in a charge sheeted matter to quash the proceedings in Crime No.49 of 2002 as it is prayed for in Crl.O.P.No.6788 of 2002 and the other prayer to set aside the subsequent investigation pursuant to the order of the Superintendent of Police, dated 22.1.2003, do not arise at all and the only

order that could be passed by this Court is to dismiss both the above Criminal Original Petitions as infructuous directing the petitioner to face the trial before the trial Court and hence the following order:

In result,
(i) both the above Criminal Original Petitions do not merit acceptance and have become infructuous and the same are dismissed as such;
(ii) the court of Judicial Magistrate, Valliyur is directed to

expedite the trial proceedings so as to dispose of the case on merits and in accordance with law at the earliest;
(iii) consequently, Crl.M.P.No.6810 of 2003 is also dismissed.

Index:Yes

Internet:Yes

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To
The District Munsif, Valliyur.